

February 14, 2006

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0301054**

**VICTOR EUGENE TILSON**  
Code Enforcement Appeal

Location: 10429 16th Avenue Southwest

Appellant: **Victor Tilson**  
10429 – 16th Avenue Southwest  
Seattle, Washington 98168  
Telephone: (206) 241-5656

King County: Department of Development and Environmental Services,  
*represented by* **DenoBi Olegba**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 205-1528  
Facsimile: (206) 296-6604

**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny in part, grant in part

**EXAMINER PROCEEDINGS:**

Hearing Opened:	February 9, 2006
Hearing Closed:	February 9, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS OF FACT:

1. On December 19, 2005 the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Victor Eugene Tilson and Seattle Transmission regarding alleged code violations on tax lot 6303400270 located in the 10400 block of 16th Avenue Southwest in White Center. The notice and order cites the property for structural additions and repairs without required permits, including creation of an illegal dwelling unit; an accumulation of vehicles parts throughout the premises; storage of petroleum products and inflammable materials in violation of the International Fire and the International Building Codes; failure to obtain a county Fire Marshal Operational Permit in violation of the International Fire Code; failure to meet specific requirements of the International Fire Code, including smoking, electrical, labeling and fire extinguisher provisions; and improper discharge of contaminated surface water.
2. Mr. Tilson has filed a timely appeal of the notice and order. At the outset an important clarification needs to be made. Mr. Tilson's appeal statement suggests a concern that DDES is trying to prohibit the transmission repair business use itself, but this is not correct. The notice and order focuses on conditions maintained on the premises requiring correction, but not on the underlying business use. The property is zoned Community Business (CB) with a district overlay that permits a wide range of industrial uses as well.
3. This code enforcement proceeding commenced in 2003 with the inability of the county Fire Marshal's Office to obtain satisfactory access to the Seattle Transmission premises to perform its annual inspection. Items 3, 4 and 5 within the notice and order relate directly to fire safety issues. Deputy Fire Marshal John Klopfenstein testified at the appeal hearing that he has been able to perform three site inspections since early December 2005 and confirmed that the Appellant has made progressive improvement in remedying fire safety issues. It was Mr. Klopfenstein's testimony that items 3, 4 and 5 of the notice and order had been satisfactorily corrected and that these citations could be dismissed from the proceeding.
4. Item 2 within the notice and order, the citation for an "accumulation of vehicle parts throughout the premises of this site", appears also to have originated with fire safety concerns. Correction no. 7 within the Fire Marshal's December 8, 2005 inspection report describes the need to provide engineering calculations for the elevated interior shelving where transmission casings are stored, and correction no. 10 notes a concern with transmissions stored on racks within a bay at a height over 12 feet without visible seismic protection. The Fire Marshal's later inspection reports document the remediation of all other cited items on the list but defer to code enforcement responsibility for correction nos. 7 and 10. The hearing testimony of Code Enforcement Officer DenoBi Olegba described more than 60 transmission casings stored in what appeared to be a risky fashion, poorly supported at a high elevation without seismic straps. Mr. Olegba expressed a concern that if there were an interior fire this lightweight shelving might collapse and endanger fire fighters responding to the scene.
5. While Mr. Olegba's concerns as expressed in his testimony are entirely legitimate, the generalized citation within the notice and order for "accumulation of vehicle parts throughout the premises" is not sufficiently precise to notify the property owner of the nature of the alleged violation. Such a generic citation might suffice on a residential property because in the residential context any accumulation of vehicle parts anywhere could be problematic. But citing a transmission repair business for an accumulation of vehicle parts provides the property owner with no useful information. A transmission repair facility is going to abound with vehicle parts, and the question that must be addressed by the notice and order is which among these parts are improperly stored. Because the notice and order does not answer this question, it is legally

deficient and cannot support a finding of non-compliance. Moreover, to the extent that these concerns are related to fire safety issues, the Fire Marshal's Office is perhaps better positioned to reassume responsibility for their correction as a part of its normal inspection process.

6. Item no. 6 within the notice and order is also very general in scope, citing the property owner for failure to "implement all required source control and structural Best Management Practices to protect surface water, storm water, and groundwater from pollutant contamination..." The focus here appears to be floor drains within the shop buildings that staff thinks may outlet to the Duwamish River. The fundamental problem is that staff has not produced any reliable evidence to support this claim. Mr. Tilson testified that his conversations with the local sewer district indicated that his drainage system discharges to a sanitary sewer. The proper disposal of petroleum-laden wash down water is obviously a matter of serious public concern. If county staff wants to research this matter and can document release of polluted storm water from the Tilson property to natural receiving waters, then this is a problem that demands correcting. But there is no factual basis within this record to uphold a citation for release of polluted flows to the Duwamish; staff has not met its *prima facie* burden to demonstrate that improper surface water discharge is occurring from the Tilson site.
7. This leaves remaining the first item of the notice and order for "construction of an addition and/or a structural repair without the required permits, inspections and approvals," including the creation of an "illegal dwelling unit". The ultimate regulatory question of whether an accessory dwelling unit is permitted in the CB zone is somewhat fuzzy. The table at KCC 21A.08.030 A shows an apartment use within the CB zone as being permitted if it complies with a development condition stating that it must be "part of a mixed use development subject to the conditions of KCC Chapter 21A.14". If it is any further help, KCC 21A.06.753 defines a mixed use development as "a combination of residential and non-residential uses within the same building or site as part of an integrated development project with functional interrelationships and coherent physical design". For our present purposes it is sufficient to conclude that the conversion of storage space within a commercial building into an apartment unit without a building permit currently lacks the regulatory rationale for qualification as a mixed use development. But it is not clear that with appropriate design adaptations the mixed use development requirement might not be met.
8. The second structural alteration described by staff involves the extension of a shop building west to an existing alley. The most recent set of building plans on record for the Seattle Transmission property date from 1988 and depict an existing building located 22 feet from the edge of the alley. Current photographs submitted by staff now show a building addition which extends to the alley edge, supporting an inference that this new addition must be about 22 feet in length. A building permit either needs to be obtained for this structure or it must be removed.

#### CONCLUSIONS:

1. Items 3, 4 and 5 from the December 19, 2005 notice and order are dismissed based on testimony from the Deputy Fire Marshal that the property has been brought into compliance with the regulatory requirements cited.
2. Also, item no. 2 of the notice and order relating to an accumulation of vehicle parts must be dismissed for vagueness. A permitted commercial transmission repair business is going to have vehicle parts nearly everywhere on the premises. The notice and order citation is defective because it does not inform the property owner as to which vehicle parts are alleged to be improperly maintained or stored.

3. Item no. 6 of the notice and order is dismissed from the proceeding based on the failure of staff to provide factual evidence for its support. Due to the potential seriousness of the water pollution issue, however, this dismissal is made without prejudice against refiling a notice and order for improper storm water discharge based on competent documentation.
4. The notice and order is sustained with respect to item no. 1 regarding the construction of an addition extending west to the alley and for conversion of upstairs space into an apartment unit, both without required building permits. The requisite permits will need to be obtained for these structures or else they must be removed.

DECISION:

The appeal is DENIED with respect to item 1 of the notice and order relating to repair and construction without building permits; it is GRANTED as to all other citations.

ORDER:

1. Within 60 days of the date of this order the Appellant shall either file complete building permit applications to legalize the westerly building extension adjacent to the alley and the upstairs apartment or, alternatively, demolish the extension and convert the apartment to non-habitable storage space.
2. No penalties shall be assessed against the Appellant or his property if the deadline stated above in condition no. 1 is met. If the deadline is not met, penalties may be assessed by DDES retroactive to the date of this order.

ORDERED this 14th day of February, 2006.

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Stafford L. Smith  
King County Hearing Examiner

TRANSMITTED via certified mail this 14th day of February, 2006, to the following parties:

Victor Eugene Tilson  
10415 – 16th Ave. SW  
Seattle, WA 98146

TRANSMITTED this 14th day of February, 2006, to the following parties and interested persons of record:

Don Atwood  
A.C. Associates Architects  
5416 California Ave. SW  
Seattle WA 98136

Victor Eugene Tilson  
10415 - 16th Ave. SW  
Seattle WA 98146

Randy Tilson  
10415 - 16th Ave. SW  
Seattle WA 98146

Jeri Breazeal  
DDES/LUSD  
MS OAK-DE-0100

DDES, Code Enf. Billing  
MS OAK-DE-0100

Elizabeth Deraitus  
DDES/LUSD  
MS OAK-DE-0100

John Klopfenstein  
DDES/BSD  
Fire Inspection  
MS OAK-DE-0100

Patricia Malone  
DDES/LUSD  
MS OAK-DE-0100

DenoBi Olegba  
DDES/LUSD  
MS OAK-DE-0100

Lamar Reed  
DDES/LUSD  
MS OAK-DE-0100

Toya Williams  
BSD/INT  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

### MINUTES OF THE FEBRUARY 9, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0301054.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba and John Klopfenstein, representing the Department; Victor Eugene Tilson, the Appellant, and Randy Tilson and Don Atwood.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to the Hearing Examiner
- Exhibit No. 2 Copy of the notice & order issued December 19, 2005
- Exhibit No. 3 Copy of the appeal received January 4, 2006
- Exhibit No. 4 Copies of codes cited in the notice & order
- Exhibit No. 5A Group of photographs showing auto parts and right-of-way
- 5B Group of photographs showing the open drain area dated March 21, 2005
- 5C Group of photographs showing the interior dated March 21, 2005
- Exhibit No. 6 Documents, postings and permit activity on the property
- Exhibit No. 7 Copies of plans on the building
- Exhibit No. 8 Inspection reports from the King County Fire Marshal's Office dated December 8, 2005
- Exhibit No. 9 Follow-up inspection reports from the King County Fire Marshal's Office dated December 19, 2005